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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. [redacted] 32

FIDELITY UNION TRUST COMPANY and MINTON H. TWINCH, as Executors of the Last Will and Testament of Edith M. Peck, deceased,

Petitioners,

—against—

ETHEL ADELAIDE FIELD,

Respondent.

BRIEF OF THE RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

RUSSELL C. MACFALL,
Counsel for Respondent.

THE COURT PRESS, N. Y. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 815.

FIDELITY UNION TRUST COMPANY and MINTON H. TWINCH, as Executors of the Last Will and Testament of Edith M. Peck, deceased,

Petitioners,

—against—

ETHEL ADELAIDE FIELD,

Respondent.

BRIEF OF THE RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

Ethel Adelaide Field, the respondent, opposes the issuance of a writ of certiorari to review a judgment of the Circuit Court of Appeals for the Third Circuit, which reversed a judgment of the District Court of the United States for the District of New Jersey awarding the proceeds of a savings bank trust account to the petitioners.

There was no opinion delivered in the District Court. The opinion of the Circuit Court of Appeals was rendered on December 20, 1939, and was reported in 108 Fed. 2d, 521 (R., pp. 29 to 48).

Statement of the Case.

The primary question here presented is whether the Federal court, in the construction of a New Jersey statute, was required to follow two decisions of the New Jersey Court of Chancery, a trial court, both rendered after the occurrence of the facts in this case, in the absence of any decisions upon such construction by any New Jersey appellate court.

The issue presented by the case to the courts below was whether the proceeds of a savings bank account in the United States Savings Bank of Newark, New Jersey, the title of the account being "Edith M. Peck, in trust for Ethel Adelaide Field", was properly payable upon the death of Edith M. Peck to the named beneficiary, Ethel Adelaide Field, or to Miss Peck's executors. Mrs. Field, the beneficiary, claimed the proceeds of the account by virtue of the provisions of Chapters 40, 41 and 42 of the New Jersey Laws of 1932 (printed at pages 19 to 23 of the petition). The petitioners claimed the proceeds of the account as an asset of the estate of Edith M. Peck, upon the ground that the 1932 statutes did not confer upon the named beneficiary any rights to the proceeds of the account and in support of their contention, cited two decisions of the Court of Chancery, namely: *Thatcher* v. *Trenton Trust Company,* 119 N. J. Eq. 408, and *Travers* v. *Reid,* 119 N. J. Eq. 416, both of which were decided in January, 1936, a year after the decedent's death.

After trial, the District Court found for the petitioners (defendants below). Upon appeal, the United States Circuit Court of Appeals reversed the judgment of the District Court and awarded the pro-

ceeds of the account to the named beneficiary, upon the grounds that the New Jersey statutes of 1932 entitled the beneficiary to the proceeds of the bank account upon the death of the creator and that the Federal courts were not bound to follow the decisions of the Court of Chancery of New Jersey in the absence of a construction of the statutes by New Jersey's court of last resort.

The facts of the case are substantially stated at pages 2 and 3 of the petition. One important fact was omitted from that statement, namely: that the Fidelity Union Trust Company, one of the executors now claiming the bank account as an asset of the estate, acting through Frank E. Lott, its Assistant Trust Officer, assisted and advised the decedent a few days before her death in the creation of said account as a tentative trust account, upon the decedent's statement that upon her death she desired Mrs. Field to get the account (R., pp. 14 to 16).

Reasons for Denial of a Writ of Certiorari.

1. There is no conflict between the decision in this case and the decision in any other United States court case. There is no conflict between this decision and the cases of *Erie R. R. Co.* v. *Hilt,* 247 U. S. 97, and *Erie R. R. Co.* v. *Duplak,* 286 U. S. 440, cited by the petitioners, because in those cases the decision of the New Jersey Supreme Court upon a construction of a New Jersey statute was rendered by that Court while sitting as an appellate court.

2. The decision of the Circuit Court of Appeals upon the construction of the New Jersey statute was not in conflict with applicable local decisions of au-

thoritative State courts because the two 1936 decisions of the Court of Chancery, relied upon by the petitioners, have not been followed by any appellate court and in the only case citing said Court of Chancery decisions, presented to the Court of Errors and Appeals, New Jersey's court of last resort, namely: the case of *Cutts* v. *Najdrowski,* 123 N. J. Eq. 481; 198 Atl. 885, which reversed the Court of Chancery (the Vice-Chancellor's opinion is reported in 121 N. J. Eq. 546, 191 Atl. 867), the highest court ignored the *Thatcher* and *Travers* citations and summarily dismissed the contention for which they were cited as authority.

3. An exhaustive search has disclosed no reported case where this Court has granted certiorari to review a Federal court decision construing a local statute contrary to the construction thereof by a State trial court, in the absence of a construction by an authoritative State appellate court.

Argument.

Summary of the Argument.

POINT I—The 1932 statutes of New Jersey effectively validated tentative trusts with respect to savings bank accounts.

POINT II—The Federal courts are not bound to follow decisions of the New Jersey Court of Chancery, sitting as a trial court, construing the State statute, particularly where the decisions nullify the plain mandate of the statute.

POINT III—The petition for a writ of certiorari should be denied.

POINT I.

The 1932 statutes of New Jersey effectively validated tentative trusts with respect to savings bank accounts.

The respondent has conceded that prior to the enactment of the 1932 statutes, tentative trusts of savings bank accounts were invalid in New Jersey. Such savings bank trust accounts were made valid, however, by Chapters 40, 41 and 42 of the New Jersey Session Laws of 1932. These laws plainly provide, in effect, that when any deposit is made by any person in trust for another, without other or further notice of the existence and terms of a legal and valid trust being given to the bank, then upon the death of the trustee the account shall be paid to the beneficiary, and the legal representatives of the deceased trustee shall have no right to the proceeds of the account (Petition, p. 19).

That this statute was concluded to mean exactly what it says, at the time of the deceased's death in January, 1935, is indicated by the fact that the deceased was advised, prior to her death, by an Assistant Trust Officer of the petitioner, Fidelity Union Trust Company, to create this account in trust for Mrs. Field in order to effectuate Miss Peck's intent that, in the event of her death, Mrs. Field should obtain the proceeds.

The provision of the statute that the "legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds

so deposited may have been the property of the trustee" would seem to effectively bar any claim of the petitioners to the bank account.

POINT II.

The Federal courts are not bound to follow decisions of the New Jersey Court of Chancery, sitting as a trial court, construing the State statute, particularly where the decisions nullify the plain mandate of the statute.

Petitioners have made claim to the bank account upon the authority of the cases of *Thatcher* v. *Trenton Trust Company, supra,* and *Travers* v. *Reid, supra,* which were decided by the Court of Chancery of New Jersey at approximately the same time in January, 1936, upon facts substantially similar to the facts in this case. In each of these two cases, the decision was rendered by a Vice-Chancellor, sitting as a trial judge, in an equity suit. Neither of the cases were reviewed by appeal and no appellate court of New Jersey has passed upon the validity of the 1932 Acts.

Petitioners have cited *Erie R. R. Co.* v. *Tompkins,* 304 U. S. 64, in support of their argument that the Federal courts were required to follow these Court of Chancery decisions. *Erie* v. *Tompkins* has no application to the point involved because the Federal courts were bound, prior to that decision, to follow the decisions of the State courts of last resort in the construction of local statutes. Such has been the rule at least since *Elmendorf* v. *Taylor,* 10 Wheat. 152, and was reiterated by this Court as recently as

February 26, 1940, in *Minnesota Ex Rel. Pearson* v. *Probate Court, Ramsey Co.* (No. 394, this Term), Vol. 84, Supreme Court, Law Ed. Advance Opinions, page 477, where this Court said (at p. 479):

> "* * * For the purpose of deciding the constitutional questions appellant raises we must take the statute as though it read precisely as the highest Court of the State has interpreted it. * * *."

The decisions of inferior State tribunals have never been regarded as of binding force upon the Federal courts. This is particularly so where the decision of a trial court nullifies or renders ineffective the plain intent of the statute.

The petitioners also rely upon the case of *Erie R. R. Co.* v. *Hilt,* 247 U. S. 97, in their contention that the Federal courts were required to follow the decisions of the Court of Chancery, but in that case this Court simply held that the Circuit Court of Appeals should have followed a decision of the Supreme Court of New Jersey which gave a full literal meaning to the statute there involved and which was rendered by the New Jersey Supreme Court as an appellate court in the review of a judgment of the New Jersey Circuit Court. In that case, this Court indicated its agreement with the interpretation of the statute made by the New Jersey Supreme Court. The *Hilt* decision contains no suggestion that the same ruling would have been made had the local decision, construing the State statute, been rendered by a trial court with the effect of voiding the statute.

The argument of the petitioners that the New Jersey Court of Chancery is of equal importance with

the Supreme Court of New Jersey is beside the point. It may be noted, however, from the authorities cited in the petitioners' brief, that the New Jersey Supreme Court is a court of important appellate, as well as original, jurisdiction, whereas the Court of Chancery is without appellate jurisdiction. It may also be noted therefrom that in the composition of the Court of Errors and Appeals, the Supreme Court has nine votes, whereas the Court of Chancery has but one. In considering their relative importance, a more proper comparison may be made of the functions of the respective courts in the cases under consideration, as well as the effect of the respective decisions. The decisions of a trial court which refuse to give effect to a duly adopted legislative act, cannot be truthfully compared as of equal weight with the decision of an appellate court giving literal effect to the expressions of a legislative act.

The recognition of the principle contended for by the petitioners that decisions of the Court of Chancery of New Jersey, sitting as a trial court, voiding a legislative act, are binding upon other courts of equal or superior jurisdiction, would be an extension of the rule of *stare decisis* too radical to calmly contemplate. Petitioners have not contended, nor can they validly contend, that the decisions of the Court of Chancery would be binding upon the Court of Errors and Appeals or, indeed, upon the Supreme Court of New Jersey, when the question of the construction of the 1932 statutes is presented to those courts. By what authority then are the Federal Courts so bound?

Until the question of the construction of these statutes is finally determined by the highest court of New Jersey, or, at least, by an authoritative ap-

pellate court, the Federal courts, although giving due consideration to lower court decisions, are free to determine whether or not those decisions truly express the local law.

POINT III.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

RUSSELL C. MACFALL,
Counsel for Respondent.